

AMENDED IN SENATE MARCH 13, 2003

SENATE BILL

No. 878

**Introduced by Senators Knight, Battin, Denham, Hollingsworth,
Margett, Morrow, and Oller**

February 21, 2003

An act to amend Section ~~166~~ 311.11 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 878, as amended, Knight. ~~Contempt of court: violation of protective orders~~ Child pornography.

Existing law provides that it is a crime punishable by imprisonment in a county jail for a period not to exceed one year, a fine not to exceed \$2,500, or both to possess or control any matter, the production of which involves the use of a person under 18 years of age engaging in or simulating sexual conduct.

This bill would provide that this crime is also punishable by imprisonment in the state prison. This bill would also provide that possession or control of any matter, the production of which involves the use of a person under 14 years of age engaging in or simulating sexual conduct is punishable by imprisonment in the state prison. Because this bill would increase the prosecutorial duties of local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000

statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law generally provides that every person guilty of specified contempt of court is guilty of a misdemeanor.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 166 of the Penal Code is amended to~~
2 *SECTION 1. Section 311.11 of the Penal Code is amended to*
3 *read:*
4 311.11. (a) Every person who knowingly possesses or
5 controls any matter, representation of information, data, or image,
6 including, but not limited to, any film, filmstrip, photograph,
7 negative, slide, photocopy, videotape, video laser disc, computer
8 hardware, computer software, computer floppy disc, data storage
9 media, CD-ROM, or computer-generated equipment or any other
10 computer-generated image that contains or incorporates in any
11 manner, any film or filmstrip, the production of which involves the
12 use of a person under ~~the age of~~ 18 years *of age*, knowing that the
13 matter depicts a person under ~~the age of~~ 18 years *of age* personally
14 engaging in or simulating sexual conduct, as defined in
15 subdivision (d) of Section 311.4, is guilty of a public offense and
16 shall be punished by imprisonment in the county jail for up to one
17 year, ~~or by imprisonment in the state prison~~, by a fine not
18 exceeding two thousand five hundred dollars (\$2,500), or by both
19 ~~the fine and imprisonment and fine.~~
20 (b) *Every person who knowingly possesses or controls any*
21 *matter, representation of information, data, or image, including,*
22 *but not limited to, any film, filmstrip, photograph, negative, slide,*
23 *photocopy, videotape, video laser disc, computer hardware,*
24 *computer software, computer floppy disc, data storage media,*
25 *CD-ROM, or computer-generated equipment or any other*

computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under 14 years of age, knowing that the matter depicts a person under 14 years of age personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is punishable by imprisonment in the state prison.

(c) If a person has been previously convicted of a violation of this section, or of a violation of subdivision (b) of Section 311.2, or subdivision (b) of Section 311.4, he or she is guilty of a felony and shall be punished by imprisonment for two, four, or six years.

~~(e)~~

(d) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

~~(d)~~

(e) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

read:

~~166. (a) Except as provided in subdivisions (b), (c), and (d), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:~~

~~(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.~~

~~(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of~~

1 ~~any jury while actually sitting for the trial of a cause, or upon any~~
2 ~~inquest or other proceedings authorized by law.~~

3 ~~(3) Any breach of the peace, noise, or other disturbance directly~~
4 ~~tending to interrupt the proceedings of any court.~~

5 ~~(4) Willful disobedience of the terms as written of any process~~
6 ~~, court order, or out-of-state court order, lawfully issued by any~~
7 ~~court, including orders pending trial.~~

8 ~~(5) Resistance willfully offered by any person to the lawful~~
9 ~~order or process of any court.~~

10 ~~(6) The contumacious and unlawful refusal of any person to be~~
11 ~~sworn as a witness; or, when so sworn, the like refusal to answer~~
12 ~~any material question.~~

13 ~~(7) The publication of a false or grossly inaccurate report of the~~
14 ~~proceedings of any court.~~

15 ~~(8) Presenting to any court having the power to pass sentence~~
16 ~~upon any prisoner under conviction, or to any member of the court,~~
17 ~~any affidavit, testimony, or representation of any kind, verbal or~~
18 ~~written, in aggravation or mitigation of the punishment to be~~
19 ~~imposed upon the prisoner, except as provided in this code.~~

20 ~~(b) (1) Any person who is guilty of contempt of court under~~
21 ~~paragraph (4) of subdivision (a) by willfully contacting a victim~~
22 ~~by phone or mail, or directly, and who has been previously~~
23 ~~convicted of a violation of Section 646.9, shall be punished by~~
24 ~~imprisonment in a county jail for not more than one year, by a fine~~
25 ~~of five thousand dollars (\$5,000), or by both that fine and~~
26 ~~imprisonment.~~

27 ~~(2) For the purposes of sentencing under this subdivision, each~~
28 ~~contact shall constitute a separate violation of this subdivision.~~

29 ~~(3) The present incarceration of a person who makes contact~~
30 ~~with a victim in violation of paragraph (1) is not a defense to a~~
31 ~~violation of this subdivision.~~

32 ~~(c) (1) Notwithstanding paragraph (4) of subdivision (a), any~~
33 ~~willful and knowing violation of any protective order or stay-away~~
34 ~~court order issued pursuant to Section 136.2, in a pending criminal~~
35 ~~proceeding involving domestic violence, as defined in Section~~
36 ~~13700, or issued as a condition of probation after a conviction in~~
37 ~~a criminal proceeding involving domestic violence, as defined in~~
38 ~~Section 13700, or that is an order described in paragraph (3), shall~~
39 ~~constitute contempt of court, a misdemeanor, punishable by~~
40 ~~imprisonment in a county jail for not more than one year, by a fine~~

1 of not more than one thousand dollars (\$1,000), or by both that
2 imprisonment and fine.

3 (2) If a violation of paragraph (1) results in a physical injury,
4 the person shall be imprisoned in a county jail for at least 48 hours,
5 whether a fine or imprisonment is imposed, or the sentence is
6 suspended.

7 (3) Paragraphs (1) and (2) apply to the following court orders:

8 (A) Any order issued pursuant to Section 6320 or 6389 of the
9 Family Code.

10 (B) An order excluding one party from the family dwelling or
11 from the dwelling of the other.

12 (C) An order enjoining a party from specified behavior that the
13 court determined was necessary to effectuate the orders described
14 in paragraph (1).

15 (4) A second or subsequent conviction for a violation of any
16 order described in paragraph (1) occurring within seven years of
17 a prior conviction for a violation of any of those orders and
18 involving an act of violence or “a credible threat” of violence, as
19 provided in subdivisions (c) and (d) of Section 139, is punishable
20 by imprisonment in a county jail not to exceed one year or in the
21 state prison for 16 months or two or three years.

22 (5) The prosecuting agency of each county shall have the
23 primary responsibility for the enforcement of the orders described
24 in paragraph (1).

25 (d) (1) A person who owns, possesses, purchases, or receives
26 a firearm knowing he or she is prohibited from doing so by the
27 provisions of a protective order as defined in Section 136.2 of this
28 code, Section 6218 of the Family Code, or Section 527.6 or 527.8
29 of the Code of Civil Procedure, shall be punished under the
30 provisions of subdivision (g) of Section 12021.

31 (2) A person subject to a protective order described in
32 paragraph (1) shall not be prosecuted under this section for
33 owning, possessing, purchasing, or receiving a firearm to the
34 extent that the firearm is granted an exemption pursuant to
35 subdivision (h) of Section 6389 of the Family Code.

36 (e) (1) If probation is granted upon conviction of a violation of
37 subdivision (c), the court shall impose probation consistent with
38 the provisions of Section 1203.097.

~~(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:~~

~~(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars (\$1,000).~~

~~(B) That the defendant provide restitution to reimburse the victim for the reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.~~

~~(3) (A) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay.~~

~~(B) In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or any court-ordered child support.~~

~~(4) If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of subdivision (c), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents required by this subdivision, until all separate property of the offending spouse is exhausted.~~

~~(5) (A) Any person violating any order described in subdivision (c) may be punished for any substantive offenses described under Section 136.1 or 646.9; no finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9.~~

~~(B) Any person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9.~~

~~(C) Any conviction or acquittal for any substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.~~